

I beg to differ. Spinning off large derivatives dealers would force these institutions to adequately price and capitalize the risks associated with these activities. By ending the aforementioned moral hazard, we are only strengthening financial institutions. By requiring derivative dealers to hold capital commensurate with the risk of their business, we are only strengthening prudential regulation.

Meanwhile, FDIC Chair Bair states that derivatives:

do have legitimate and important functions as risk management tools and ensure banks play an essential role in providing market-making functions for these products.

Requiring banks to spin off their derivatives, however, would not preclude them from using derivatives as risk management tools or as products to service client needs. For example, if a client wanted to hedge the interest rate risk on a floating loan through a swap, the bank would still be able to execute that transaction. Senator LINCOLN's provision doesn't ban banks from using derivatives. Instead, it says that it is inappropriate for a commercial bank to have an almost \$80 trillion derivatives book, as some do.

Of course, anyone can come up with a reason for maintaining the status quo—of saying, for example, that Senator LINCOLN's inspired solution simply goes too far. But after the crisis we just suffered, I would ask my colleagues to support these proposals which represent real reform and change. I would ask my colleagues to see the wisdom of building an enduring structure of laws instead of investing our hopes in unelected regulatory discretion. We have seen the effects of regulators neglecting their duties and banks left to self-regulation.

Instead of trusting our financial stability solely to unelected financial guardians, these amendments and provisions would all address preemptively the persistent problem of too big to fail. They all say speculative securities activity should not be covered by the government's deposit safety net. By reducing the size and scope of our largest banks, we will limit their risky behavior and minimize the possibility of one institution's failure causing an industrywide panic and a subsequent bailout of several failing megabanks.

By adopting these commonsense proposals, we can go a long way toward stabilizing our economy, restoring confidence in our market, and protecting the American people from a future bailout. America cannot afford another financial meltdown. The American people are looking to Congress to assure that it does not happen. We have a precious few remaining days on this bill to follow through on that commitment.

As I started out, I wish to commend Chairman DODD and the committee for the excellent work they have done on this bill. I also commend Chairman DODD for the fact that we have had such good comity and such good relations between both sides of the aisle on

this bill. That is why I am so concerned about the decision by the other side to block the Merkley-Levin amendment. This is at the heart of this bill. If you had to look at one of the things that is very important and that everyone commends, it would be this amendment. We have voted for a lot of Republican amendments and accepted a lot of Republican amendments that Democrats were not in favor of. This seems like the wrong time in the process toward the end to do this.

I hope my friends on the other side of the aisle will rethink what we are doing and that we get a chance to vote, because it is absolutely essential to this bill that we have a vote on the Merkley-Levin amendment.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3892, AS FURTHER MODIFIED, TO AMENDMENT NO. 3739

Mr. BINGAMAN. Mr. President, I have an amendment No. 3892, as modified, and I ask unanimous consent to further modify it.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered. The amendment is further modified.

The amendment, as further modified, is as follows:

On page 565, between lines 2 and 3, insert the following:

(e) JUST AND REASONABLE RATES.—Section 2(a)(1)(C) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(C)) (as amended by section 717(a)) is amended by adding at the end the following:

“(vi) Notwithstanding the exclusive jurisdiction of the Commission with respect to accounts, agreements, and transactions involving swaps or contracts of sale of a commodity for future delivery under this Act, no provision of this Act shall be construed—

“(I) to supersede or limit the authority of the Federal Energy Regulatory Commission under the Federal Power Act (16 U.S.C. 791a et seq.) or the Natural Gas Act (15 U.S.C. 717 et seq.);

“(II) to restrict the Federal Energy Regulatory Commission from carrying out the duties and responsibilities of the Federal Energy Regulatory Commission to ensure just and reasonable rates and protect the public interest under the Acts described in subclause (I); or

“(III) to supersede or limit the authority of a State regulatory authority (as defined in section 3(21) of the Federal Power Act (16 U.S.C. 796(21)) that has jurisdiction to regulate rates and charges for the sale of electric energy within the State, or restrict that State regulatory authority from carrying out the duties and responsibilities of the State regulatory authority pursuant to the jurisdiction of the State regulatory authority to regulate rates and charges for the transmission or sale of electric energy.

“(vii) Nothing in clause (vi) shall affect the Commission's authority with respect to the trading, execution, or clearing of any agree-

ment, contract, or transaction on or subject to the rules of a registered entity, including a designated contract market, derivatives clearing organization, or swaps execution facility.”.

(f) PUBLIC INTEREST WAIVER.—Section 4(c) of the Commodity Exchange Act (7 U.S.C. 6(c)) (as amended by section 721(d)) is amended by adding at the end the following:

“(6) If the Commission determines that the exemption would be consistent with the public interest and the purposes of this Act, the Commission shall, in accordance with paragraphs (1) and (2), exempt from the requirements of this Act an agreement, contract, or transaction that is entered into—

“(A) pursuant to a tariff or rate schedule approved or permitted to take effect by the Federal Energy Regulatory Commission;

“(B) pursuant to a tariff or rate schedule establishing rates or charges for, or protocols governing, the sale of electric energy approved or permitted to take effect by the regulatory authority of the State or municipality having jurisdiction to regulate rates and charges for the sale of electric energy within the State or municipality; or

“(C) between entities described in section 201(f) of the Federal Power Act (16 U.S.C. 824(f)).”.

Mr. BINGAMAN. Mr. President, the further modification clarifies that each agency—that is, the FERC and the CFTC—will retain its legitimate authority, whether to review derivatives or to review rates and charges and prevent manipulation, without one agency knocking the other agency out of the box of its respective mission. It is a good improvement.

I believe this amendment is now without substantial objection. I ask that we proceed to a voice vote on the amendment.

The PRESIDING OFFICER. If there is no further debate on the amendment, the question is on agreeing to the amendment.

The amendment (No. 3892), as further modified, was agreed to.

Mr. DODD. Mr. President, I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DODD. Mr. President, our colleague from North Dakota is going to speak over the next several minutes. At the conclusion of that, I will make some remarks, and then there will be a tabling motion of the Dorgan amendment. To make colleagues aware, that is what will happen.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I have spoken on this amendment previously and have waited patiently for several weeks to be able to have an opportunity to vote on it. We have not been able to get it pending. I now have it pending because I offered it as a second-degree amendment to the Grassley amendment.

This is an amendment that would ban the use of naked credit default swaps. You ask, how does a credit default swap get naked? It is an exotic, new financial instrument that has been developed over recent years to be traded back and forth by the big financial